

04-27984

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In Re:

Chapter 13 Case:
Case Number BKY 04-44010-NCD

Marjolaine Larson, aka
Laini Larson

Debtor(s)

**NOTICE OF HEARING AND MOTION
FOR RELIEF FROM STAY**

To: The Debtor and other entities specified in Local Rule 9013-3(a).

1. Deutsche Bank Trust Company Americas, as Trustee moves the Court for relief requested below and gives Notice of Hearing.

2. The Court will hold a Hearing on this motion at 2:30 p.m., on October 7, 2004, in Courtroom No. 7 West, at the United States Courthouse, at 300 South Fourth Street, in Minneapolis, Minnesota.

3. Any response to this motion must be filed and delivered no later than October 4, 2004, which is three days before the time set for the hearing(excluding Saturdays, Sundays, and holidays), or filed and served by mail no later than August 28, 2004, which is seven days before the time set for the hearing(excluding Saturdays, Sundays, and holidays). UNLESS A RESPONSE OPPOSING THE MOTION IS TIMELY FILED, THE COURT MAY GRANT THE MOTION WITHOUT A HEARING.

4. This court has jurisdiction over this motion pursuant to 28 U.S.C. §§157 and 1334, Bankruptcy Rule 5005 and Local Rule 1070-1. This proceeding is a core proceeding. The petition commencing this Chapter 13 case was filed on July 20, 2004. The case is now pending in this court.

5. This Motion arises under 11 U.S.C. §362 and Bankruptcy Rule 4001. This motion is filed under Bankruptcy Rule 9014 and Local Rules 9013-1 - 9019-1(d). Movant Requests Relief with respect to exempt property of the debtor subject to a lien.

6. On April 13, 2001, Laini B. Larson made, executed and delivered to Town and Country Credit her Note (hereinafter referred to as the "Note"), in the original principal amount of \$96,750.00 bearing interest from the date thereof at the rate of 9.25% per annum until paid, payable in monthly installments commencing on the first day of each and every calendar month thereafter until the principal and interest were fully paid.

7. On April 13, 2001, to secure the payment of the Note, Laini B.

Larson executed and delivered to Town and Country Credit her Mortgage (hereinafter referred to as the "Mortgage"), mortgaging and conveying certain real estate in Anoka County, Minnesota, legally described as follows:

That part of the West Half of the West Half of the Southwest Quarter of Section 30, Township 33, Range 23, that is described as follows: Commencing at the Northwest corner of said West half of the West half of the Southwest Quarter; thence South along the West line thereof a distance of 561 feet; thence East parallel with the North line thereof a distance of 198 feet; thence north parallel with said West line a distance of 561 feet to the said North line; thence West along said North line to the point of commencement, except therefrom, Parcel 16, Anoka County Highway Right of Way Plat No. 13

which property has an address of: 8 Viking Boulevard Northeast, East Bethel, MN 55011. The mortgage was filed for record in the office of the Recorder, County of Anoka, on May 18, 2001, as Document No.1571060; thereafter corrected by corrective mortgage recorded October 11, 2001, Document No. 1609650, and was subsequently assigned to Movant by assignment of mortgage. A copy of the mortgage and assignment are attached hereto as Exhibit "A" and made a part hereof by reference.

8. The debtors have filed a plan dated July 21, 2004, which was has not yet been confirmed by subsequent Court Order. The plan provided, among other things that:

"5. Home Mortgages In Default [§1322(b)(5)] - The trustee will cure defaults on claims secured only by a security interest in real property that is the debtor's principal residence as follows. The debtor will maintain the regular payments which come due after that date the petition was filed. The creditors will retain their liens. The amounts of default are estimates only. The trustee will pay the actual amounts of default.

9. Notwithstanding the foregoing provisions of said plan, the debtors have not maintained current payments with respect to said note and mortgage, while this case is pending.

10. Debtors are in arrearage for monthly payments as shown below. Debtor has not made any post-petition payments since the Bankruptcy was filed. Post-petition arrearage include the following:

2 payments @ \$880.39	\$1,760.78
2 late charges @ \$39.79	79.58
Attorneys Fees & Costs	<u>800.00</u>
TOTAL POST-PETITION	\$2,640.36

Through Debtors' failure to make current post-petition payments. No payments have been made pursuant to the plan. Amounts currently due and owing include the following:

Principal	\$95,126.97
Interest	2,559.18
Accumulated late fees	79.58
Property inspections	7.95

Attorneys Fees & Costs
TOTAL

2,342.44
\$100,116.12

11. Debtors have claimed said mortgaged property as exempt pursuant to MSA 510.01.

12. By reason of the foregoing, good cause exists to lift the automatic stay imposed by 11 USC section 362 to allow Movant to pursue its remedies under State Law.

13. **This is an attempt to collect a debt and any information obtained will be used for that purpose.** This notice is required by the provisions of the Fair Debt Collection Practices Act and does not imply that we are attempting to collect money from anyone who has discharged the debt under the Bankruptcy Laws of the United States.

Wherefore, Deutsche Bank Trust Company Americas as Trustee moves the court:

1. For an Order granting creditor relief from the automatic stay of 11 USC section 362.

2. For such other and further relief as the Court finds just and proper.

Dated: 9-15-01

Signed: /e/ Nancy A. Nordmeyer

SHAPIRO & NORDMEYER, L.L.P.
Nancy A. Nordmeyer-121356
Lawrence P. Zielke-152559
Attorney for movant
7300 Metro Boulevard #390
Edina, MN 55439-2306
(952) 831-4060

VERIFICATION

I, Dan Antzer, the Bankruptcy Manager for Fidelity National Foreclosure Solutions, the authorized servicer for movant, the movant named in the foregoing notice of hearing and motion, declare under penalty of perjury, that the foregoing is true and correct according to the best of my knowledge, information and belief.

Executed on:

9.13.01

Signed:

[Signature]

Fidelity National Foreclosure Solutions
1270 Northland Drive, Suite 200
Mendota Heights, MN 55120

1571060

(14-31-24-41-0080)

5-18-01

[Space Above This Line For Recording Data]

LOAN NO. 20209284-144

MORTGAGE

SIGNATURE TITLE

DL 18412A

Return To:

TOWN & COUNTRY CREDIT
2600 MICHELSON DR, SUITE 300
IRVINE, CA 92612

No
Legal
Att'd

DEFINITIONS

Words used in multiple sections of this document are defined below and other words are defined in Sections 3, 11, 13, 18, 20 and 21. Certain rules regarding the usage of words used in this document are also provided in Section 16.

(A) "Security Instrument" means this document, which is dated April 13, 2001, together with all Riders to this document.

MINNESOTA-Single Family-Fannie Mae/Freddie Mac UNIFORM INSTRUMENT

Form 3024 1/01

6(MN) (0005)

400-1(MN) (01/01)

Page 1 of 15

Initials:

VMP MORTGAGE FORMS - (B001621) 723



1609650 /

10-11-01

30.33.23.32.0004

(Space Above This Line For Recording Data)

LOAN NO. 20209284-144

CORRECTIVE

MORTGAGE

SIGNATURE TITLE
01.1743A

Return To:

TOWN & COUNTRY CREDIT
2600 MICHELSON DR, SUITE 300
IRVINE, CA 92612

DEFINITIONS

Words used in multiple sections of this document are defined below and other words are defined in Sections 3, 11, 13, 18, 20 and 21. Certain rules regarding the usage of words used in this document are also provided in Section 16.

(A) "Security Instrument" means this document, which is dated April 13, 2001, together with all Riders to this document.

This corrective mortgage is being filed to add the legal description which was missing from Mortgage Document No. 1571060.

Receipt No. 46179

MINNESOTA-Single Family-Fannie Mae/Freddie Mac UNIFORM INSTRUMENT

Form 3024 1/01

6(MN) 10005

400-1MN (01/01)

Page 1 of 15

Initials

VMP MORTGAGE FORMS - (800)921-7291



1926083

30 33 23 32 0004

ASSIGNMENT OF MORTGAGE

04-27984 *muf*

MMSI#:11359299

FOR GOOD AND VALUABLE CONSIDERATION, the sufficiency of which is hereby acknowledged, the undersigned,

TOWN & COUNTRY CREDIT

c/o 4708 Mercantile Drive, Ft. Worth, TX 76137, (Assignor), by these presents does convey, grant, sell, assign, transfer and set over the described mortgage together with the certain note(s) described therein together with all interest secured thereby, all liens, and any rights due or to become due thereon to

DEUTSCHE BANK TRUST COMPANY AMERICAS F/K/A BANKERS TRUST COMPANY, as Trustee and Custodian by Saxon Mortgage Services Inc. f/k/a Meritech Mortgage Services, Inc., its

attorney-in-fact, whose address is 1761 East Saint Andrew Pl., Santa Ana, CA 92705, its successors or assigns (Assignee).

Said mortgage dated 04/13/01 executed by

LAINI B LARSON

to TOWN & COUNTRY CREDIT

and filed for record on 10/11/01 as Doc No. 2001111328 ~~1571060~~ ✓
(or Book , Page), in 1609650 ✓

the office of the County recorder of ANOKA, MN.

Dated: 04/08/04

TOWN & COUNTRY CREDIT

By

LAINI B LARSON
VP - Director Capital
By *[Signature]*
VP - Credit Mgr.

STATE OF

COUNTY OF

I HEREBY CERTIFY that on 04/08/04, before me, an officer duly authorized in the State and County aforesaid to take acknowledgements personally appeared and

personally known, who, being each by me duly sworn both did say that they are respectively the and

of TOWN & COUNTRY CREDIT

, the corporation named in the foregoing instrument, and that said instrument was signed in behalf of said corporation by authority of its board of directors and said

and acknowledge said instrument to be the free act and deed of said corporation.

UNITED STATES BANKRUPTCY COURT

DISTRICT OF MINNESOTA

In Re:

Case No. 04-44010-NCD

Chapter 13

Marjolaine Larson, aka
Laini Larson,

Debtor(s)

MEMORANDUM OF LAW

Deutsche Bank Trust Company Americas, as Trustee ("Movant"), submits this memorandum of law in support of its motion for relief from the stay in the above-entitled matter.

FACTS

Movant holds a valid, duly perfected mortgage on real property owned by the Debtors. On the date this case was filed, the Debtor(s) were delinquent in respect of payments due under the note and mortgage. Since this case was filed, Debtor(s) are in arrears in the total amount of \$2,640.36.

ARGUMENT

1. Under Section 362.(d)(1) of the Bankruptcy Code, relief from the automatic stay shall be granted upon request of a creditor "for cause, including the lack of adequate protection of an interest in property of such creditor." 11 U.S.C. Sec. 362 (d) (1). The Debtor(s) in this case have failed to make the payments required by the note and mortgage for a period of more than one month. Debtor(s) have not otherwise provided Movant with adequate protection of its interest in the property. Such circumstances constitute cause, within the meaning of Section 362 (d) (1), justifying relief from the stay. In Re Video East, Inc., 41 B. R. 176 (Bkrtcy. E. D. Pa. 1984); In Re Frascatore, 33 B. R. 687 (Bkrtcy. E. D. Pa. 1983).

2. Pursuant to Section 362 (d) (2) of the Bankruptcy Code, relief from the stay is also appropriate where Debtor(s) have no equity in the subject property and the property is not necessary to an effective reorganization. 11 U.S.C. Sec. 362 (d) (2). See, In Re Gellert, 55B.R. 970 (Bkrtcy. D. N. H. 1983). In the present case the balance due Movant on the note and mortgage is \$100,116.12.

Accordingly, Movant is entitled to an order terminating the stay and authorizing it to foreclose its mortgage on the property.

Dated: 9.15.01

Respectfully submitted,
SHAPIRO & NORDMEYER, L.L.P.

By/e/ Nancy A. Nordmeyer
Nancy A. Nordmeyer-121356
Lawrence P. Zielke-152559
Attorney for Movant
7300 Metro Boulevard #390
Edina, MN 55439-2306
(952) 831-4060

SWORN CERTIFICATE OF SERVICE

STATE OF MINNESOTA)
) SS
COUNTY OF HENNEPIN)


I, **Stephanie Pilegaard** says that on September 15, 2004, I mailed copies of the annexed Memorandum of Law, Proposed Order for Relief from Stay, Notice of Hearing and Motion for Relief from Stay and Certificate of Service on the following interested parties at their last known address, by mailing to them, via first class mail, a copy thereof, enclosed in an envelope, postage prepaid and by depositing the same in the post office at Edina, Minnesota.

Marjolaine Larson
8 Viking Blvd NE
Cedar, MN 55011

Ian T. Ball, Esq.
12 South 6th Street, #326
Minneapolis, MN 55402

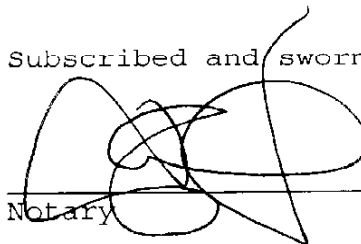
Jasmine Z. Keller, Trustee
12 South 6th Street, #310
Minneapolis, MN 55402

U.S. Trustee
1015 U.S. Courthouse
300 South 4th St.
Minneapolis, MN 55415

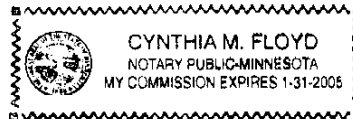


Stephanie Pilegaard

Subscribed and sworn to before me September 15, 2004.



Notary



04-27984
11359299

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In Re:

Case Number BKY 04-44010-NCD

Marjolaine Larson, aka
Laini Larson,

Debtor(s)

ORDER FOR RELIEF FROM STAY

The above-entitled matter came for hearing on October 7, 2004.

THIS CAUSE coming to be heard on the Motion of Deutsche Bank Trust Company Americas, as Trustee, a creditor in the proceeding, the Court having jurisdiction, due notice having been given, and the Court having been advised in the premises;

IT IS HEREBY ORDERED,

That the automatic stay heretofore entered in this case is modified to the extent necessary to allow Deutsche Bank Trust Company Americas, as Trustee, its successors and/or assigns, to foreclose, in accordance with State Law, the mortgage on the real property commonly known as:

That part of the West Half of the West Half of the Southwest Quarter of Section 30, Township 33, Range 23, that is described as follows: Commencing at the Northwest corner of said West half of the West half of the Southwest Quarter; thence South along the West line thereof a distance of 561 feet; thence East parallel with the North line thereof a distance of 198 feet; thence north parallel with said West line a distance of 561 feet to the said North line; thence West along said North line to the point of commencement, except therefrom, Parcel 16, Anoka County Highway Right of Way Plat No. 13

NOTWITHSTANDING Federal Rule of Bankruptcy Procedure 4001 (a)(3), this order is effective immediately.

Dated: _____

BY THE COURT:

Judge of Bankruptcy Court